

EXPLANATORY MEMORANDUM TO
THE COMMON AGRICULTURAL POLICY SINGLE PAYMENT AND
SUPPORT SCHEMES (CROSS-COMPLIANCE) (ENGLAND)
REGULATIONS 2005

2005 No. 3459

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 This instrument replaces and revokes the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) Regulations 2004 (SI 2004/3196), as amended by the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) (Amendment) Regulations 2005 (SI 2005/918).

- 2.2 It sets down the updated standards of good agricultural and environmental condition (GAEC standards) which form part of “cross compliance” which has been in place since 1 January 2005. These standards were previously set down in SI 2004/3196, as amended. These standards must be met by farmers under the reformed system of direct support schemes (which include the Single Payment Scheme) under the Common Agricultural Policy, in order that they receive their entire subsidy under those schemes.

- 2.3 This instrument also sets out the provisions for inspection and enforcement of cross compliance. Provision is made in this SI as to the competent control authority (CCA) responsible for carrying out cross compliance checks in respect the new statutory management requirements (SMRs) which apply as of 1 January 2006.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 Paragraph 17(4) of the Schedule to the Regulations refers to three volumes of maps showing the “severely disadvantaged area” of England, which is coloured pink. The severely disadvantaged area forms part of the English Less Favoured Areas. The Department has provided a copy of a map showing all the Less Favoured Areas in the UK, printed at a considerably smaller scale than the maps referred to in paragraph 17(4) of the Schedule. The Department would be happy, if the Committee wish, to provide a paper copy of the full-scale version of the maps. The official maps of the English Less Favoured Areas are in three volumes containing 235 pages of coloured A3 maps at a scale of 1:50,000.

- 3.2 The location of Less Favoured Areas in England can also be found using the interactive map at the website of Multi-Agency Geographic Information for the Countryside. The interactive map can display the less favoured area status of any land in England with a co-ordinate accuracy of 1 metre at a scale of 1:25,000. This service (available at no cost) can be found at: www.magic.gov.uk.

4. Legislative Background

4.1 General:

This instrument is being made under section 2(2) of the European Communities Act 1972 (1972. c.68). It implements certain provisions of Council Regulation (EC) 1782/2003 (Title II, Chapter 1 and Chapter 4)) and Commission Regulation (EC) 796/2004 (Title III, Chapter I and III) which lay down the framework for the new system of agricultural subsidies under Pillar 1 of the Common Agricultural Policy and set out the rules as to cross compliance.

4.2 EU legislation:

4.2.1 The Community legislation referred to above has applied to aid applications for income support payments since 1 January 2005. 7 new SMRs as to cross compliance (Annex III of Council Regulation (EC) 1782/2003 points 9-15) apply as of 1 January 2006.

4.2.2 No transposition note is necessary as this instrument relates to EC Regulations.

5. Extent

- 5.1 This instrument applies to England only.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The policy background to the establishment of cross compliance in 2005 is set out in the Explanatory Memorandum to SI 2004/3196.

- 7.2 This instrument consolidates SI 2004/3196, as amended by SI 2005/918, and amends the standards of GAEC (good agricultural and environmental condition), which Member States are required to lay down under Article 5 of Council Regulation (EC) 1782/2003, primarily to refine these provisions and introduce additional flexibilities for farmers. The majority of changes relate to issues that Defra or its implementing agencies have identified, or issues which have been raised by farmers and industry stakeholders following the first year of cross compliance implementation.

- 7.3 The changes to GAEC standards are outlined in the Explanatory Note to this instrument. Additional flexibilities for 2006 mean that farmers will be able to seek exemptions from any GAEC standard if they can satisfy the Secretary of State that one of the grounds specified in amended regulation 4 is met. These grounds relate to the laying, construction and maintenance of utilities and services, human or animal health or safety, and the control of pest or weed infestations. The grounds for exemptions which relate to certain specific standards are also widened in some cases. These exemptions relate primarily to environmental, agronomic or public/agricultural access grounds. Where land is set-aside, the grounds for an exemption in the Common Agricultural Policy Single Payment Scheme (Set-Aside) (England) Regulations 2004, as amended, apply.
- 7.4 A new GAEC standard is introduced as to the preparation of a Soil Protection Review (SPR) which builds on existing minimal soil management standards for 2005. This is part of an evolutionary approach to soil management approved by Defra Ministers in 2004 following public consultation. On or before 1 September 2006 farmers are required to carry out an assessment of soil-related problems on their land and select appropriate measures, in line with good soil husbandry, to tackle these. The assessment and measures must be recorded on the SPR. Farmers must implement the SPR in 2007 and review it annually. This standard is designed to allow farmers to use their own expertise in identifying appropriate soil protection measures and it does not therefore set blanket or prescriptive rules. The guidance and advice given in 2005 provides a foundation for farmers to draw up this plan. It is anticipated that this standard will equip farmers to manage their land better with benefits for their business and the environment. Other soil related GAEC standards (paragraphs 2, 3, and 4 of the Schedule to these Regulations) will continue to apply.
- 7.5 From January 2006 a further seven SMRs (statutory management requirements) will apply pursuant to Article 4 of Council Regulation (EC) 1782/2003. SMRs are requirements on farmers which stem from Articles within 19 EU Directives and Regulations, listed in Annex III to that Regulation, and are either existing legislative requirements, or requirements that Member States are bound to implement under European law. The new requirements for 2006 relate to public, animal and plant health. They are directly applicable and are not implemented through this instrument other than through providing for inspection and enforcement.
- 7.6 The Rural Payments Agency (RPA), as paying agency, will continue to be the body responsible for inspection and enforcement as the CCA (competent control authority) for the standards which came into force in 2005. It will also be the CCA for new SMRs 9 and 12, as well as the new SPR. The EC Regulations allow for the paying agency to be appointed in relation to standards which it can enforce as effectively as the body responsible for enforcement outside of cross compliance.

- 7.7 The Secretary of State is designated as the CCA for five of these new SMRs – SMRs 10, 11, and 13-15. Designation of the Secretary of State will mean in practise that the Veterinary Medicines Directorate (VMD) will be responsible for carrying out checks and controls for SMR 10, the RPA (as an inspection agency) or other agencies for SMR 11, and the State Veterinary Service (SVS) for SMRs 13-15. VMD, SVS and RPA are Executive Agencies of Defra.
- 7.8 The detailed standards and requirements which apply for cross compliance in 2006 are set out in the *Cross Compliance Handbook for England: 2006 edition* which is being sent to all farmers claiming the Single Payment, in December.

8. Impact

- 8.1 A Regulatory Impact Assessment on the effect that cross compliance will have on the costs of business was completed for the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) Regulations 2004. A further Regulatory Impact Assessment has also been carried out on the changes set out within this instrument. These are available through the Defra website at:

<http://www.defra.gov.uk/farm/capreform/singlepay/crosscomply/index.htm>

9. Contact

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Regulatory Impact Assessment

1. Title of Proposal

The Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) Regulations 2005.

2. Purpose and Intended Effect of Measure

2.1 Objectives

These Regulations replace and revoke the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) Regulations 2004 (SI 2004/3196), as amended by SI 2005/918. Their key objectives are to help clarify and amend some of the existing standards of Good Agricultural and Environmental Condition (GAEC standards), to introduce a Soil Protection Review (SPR) as part of the evolutionary approach to soil management previously agreed by Defra Ministers, and to designate control authorities responsible for the inspection of new Statutory Management Requirements (SMRs) which apply under EC Regulations (Council Regulation (EC) No 1782/2003) from January 2006.

2.2 Background

The purpose of SI 2004/3196 was to set the GAEC standards which form part of cross compliance and which Member States are bound to implement under Article 5 of the Council Regulation. These GAEC standards must be met by farmers under the system of direct support schemes (including the Single Payment Scheme) under the Common Agricultural Policy from 1 January 2005, in order for them to receive their full subsidy. The GAEC standards relate to the protection of soils, habitats and landscape features and mostly reinforce existing legislation or good farming practice.

SI 2004/3196 also sets out provisions necessary for the inspection and enforcement of cross compliance, for both GAEC standards and SMRs. SMRs comprise a number of articles from 19 EU Directives and Regulations identified by the European Commission as relevant to farmers. Member States have no flexibility over the introduction of the SMRs - they apply in all Member States either as pre-existing legislative requirements under European law, or requirements that Member States are bound to implement. There should therefore be no additional to costs to farmers associated with meeting these SMRs under cross compliance. The SMRs cover environmental, public, plant and animal health and, from 2007, animal welfare objectives. The SMRs are phased in over a three year period beginning in January 2005. Seven SMRs will come into force in 2006.

A full Regulatory Impact Assessment (RIA) of all the GAEC standards was carried out in 2004. The RIA can be downloaded at: <http://www.defra.gov.uk/corporate/regulat/ria/2004/cross-compliance.pdf>.

2.3 Rationale for Government Intervention

The majority of changes to GAEC standards relate to issues that Defra or its implementing agencies have identified (for example where further flexibilities can be offered to farmers), or to issues which have been raised by farmers and industry stakeholders following this first year of implementation. This government intervention will simplify the cross compliance legislation, and provide greater clarification, flexibilities and exemptions to farmers. The changes being made to these regulations are set out in the *Cross Compliance Handbook for England: 2006 edition* which replaces the 2005 Handbook and which is being issued to farmers in December.

The Soil Protection Review (SPR) is part of an evolutionary approach to soil management that was agreed with Ministers in 2004 and incorporated within the 2004 RIA. It builds on existing soil management standards. This standard is designed to allow farmers to use their own expertise in identifying appropriate soil protection measures, and is more efficient, less restrictive and less burdensome than the setting of blanket or prescriptive rules.

The Regulations also include provisions relating to the designation of control bodies for the administration and enforcement of the 2006 SMRs. If there was no government intervention then we would face a substantial risk of disallowance (reduction in EC funds available to make payments to farmers) from the European Commission for not having appropriate mechanisms in place to administer and enforce the new requirements.

3. Consultation

A full consultation exercise, including extensive engagement with stakeholders, was carried out in 2004. The consultation included various GAEC measures as well as the first eight SMRs (SMRs 1-8). A further SMR, SMR 8a, dealing with the identification of sheep and goats and replacing part of SMR 6, took effect in July 2005. Details of the consultation can be found at: <http://www.defra.gov.uk/corporate/consult/capsingle-payment/index.htm>. The responses to the consultation informed the development of the cross compliance measures subsequently set out and published within the *Cross Compliance Handbook for England: 2005 Edition*. A summary of responses to the 2004 consultation can be found at: <http://www.defra.gov.uk/corporate/consult/capsingle-payment/responses.pdf> or in the Defra Library Information Resource Centre (tel.: 020 7238 6575, e-mail: defra.library@defra.gsi.gov.uk).

Informal consultation on the SPR process has taken place since 2004 via a steering group and pilot workshops. These led to refinements to the process which were raised in a series of further workshops in 2005. Farmers also expressed a desire for clear instructions as to what they had to do, and a simple document on which to record soil protection measures. This consultation informed the development of the SPR requirements and the relevant soils guidance.

A discussion document on the 2006 SMRs (SMRs 9-15) was launched on 1 August 2005. The discussion document sought views on how clear and understandable the farmer requirements are from a farming perspective. The requirements were amended in the light of these responses and have been incorporated within the 2006 Handbook. Details of the discussion document can be found at:

<http://www.defra.gov.uk/farm/capreform/singlepay/crosscomply/stat-mang.htm>.

4. Options

There are two options for 2006:

Option 1 – Refining Cross Compliance Standards for 2006 (via a new consolidating SI).

This option means a simplification of cross compliance legislation by revoking SI 2004/3196, as amended by SI 2005/918, and consolidating the two regulations in a single, new SI. A new SI allows for amendments to be made to GAEC standards where issues have been identified by Defra or its implementing agencies, or through feedback and comments received from farmers and other stakeholders following this first year of cross compliance implementation. These amendments will, among other things, clarify the requirements, for example by adding in a definition of pesticides and making explicit the requirement to maintain a green cover on field margins. They also introduce new flexibilities and exemptions, which should make compliance less uncertain and burdensome. The SI will correct minor drafting errors and discrepancies between the Handbook and legislation, and update references to legislation. It will also incorporate provisions relating to the SPR (as previously agreed with stakeholders), as well as formally designating competent control authorities (CCAs) for the administration and enforcement of the seven new SMRs, which is preferable in terms of legal certainty than relying on a purely administrative designation. There are potential environmental and economic benefits associated with this approach that we believe will balance, if not outweigh, any costs.

Option 2 - Do Nothing

This option would effectively retain the status quo. We would be unable to consolidate and hence simplify the cross compliance regulations. The feedback and comments received from farmers and other stakeholders in the light of the first year of cross compliance implementation would not be taken into account and hence the scope for clarifications, the lowering of regulatory burden and improvements to the environmental effectiveness of measures, would be lost. We would also be unable to make arrangements for the administration and enforcement of the seven new SMRs that must come into force in January 2006. This would mean a failure to give effect to EC Regulations leading to a high risk of disallowance from the European Commission.

5. Costs and Benefits

All the costs and benefits arising to farmers from the cross compliance measures introduced in 2005 are set out in the 2004 RIA referenced at section 2.2 above. Costs and benefits arising from amendments to the 2005 measures are minor. They are outlined below for each of the two options identified above:

Option 1 – A New Consolidating SI

This option simplifies and consolidates existing legislation. There are also likely to be net overall economic and environmental benefits from the changes proposed. Each of the main changes we are making to the SI under this option is set out below.

Soil Protection Review

The requirement to carry out a simple soil management plan – the SPR – was incorporated within the 2004 RIA and designed in conjunction with industry stakeholders.

On or before 1 September 2006 a farmer must identify the soil problems on his farm and select appropriate measures on the SPR template to tackle them. The 2004 RIA estimated that for a medium-sized farm of 130ha the cost of developing an SPR would equate to £2/ha with a 10% variation for smaller and larger farms (reflecting the higher unit costs of overhead management on smaller farms and lower costs on larger farms). It was originally estimated that it might take as long as three hours to complete the SPR template for a medium-sized farm. However, the pilot workshops suggested that most farmers would be able to complete the SPR template in one hour, with those less familiar with soil management taking nearer two hours. At a cost of £18 per hour, this equates to an approximate cost (ignoring any business benefits) of £18-36 (this is based on the assumption that a farmer's salary equates to the full costs for an Executive Officer without London weighting). This will be a one-off cost, as updates to the SPR template in subsequent years will require minimal time.

SPRs provide an opportunity to deliver significant sustainable environmental benefit, particularly in terms of soils, with incidental benefits for water quality. They will be applied to individual farms taking account of varying physical characteristics and stocking patterns. Common land and holdings of 0.3 ha or less are excluded from this requirement, and hence farmers with such holdings will incur no costs. SPRs will also influence land management practices from year to year and are likely to bring about some landscape and biodiversity benefits.

Conflict with Agri-environment Commitments

Farmers with agri-environment commitments which directly and necessarily conflict with the GAEC standards will not be penalized for breaching those

standards. The SI broadens the definition of “agri-environment commitments” to incorporate afforestation schemes, schemes supporting farmers in less favoured areas (as incorporated within Council Regulation (EC) No 1257/1999), the Energy Crops Scheme, and other land management agreements entered into with English Nature that have not been converted to agri-environment schemes. Where the specific scheme requirements conflict with GAEC standards the specific scheme requirements take precedence and a farmer will not be penalised for non-compliance with cross compliance standards. This amendment therefore benefits those farmers enrolled in schemes not previously within the scope of the reference to “agri-environment commitment” by clarifying the rules and ensuring that these schemes deliver the full environmental benefits envisaged. The amendment also seeks to ensure there is no confusion as to which rules apply.

The SI also clarifies the relationship between set-aside management conditions and other GAEC standards, in particular in relation to the requirements as to 2m field margins.

Amendments to GAEC standards

(i) generic exemptions

The new SI provides for farmers to seek an exemption from GAEC standards in particular circumstances. This has been deemed appropriate on the basis of feedback from implementation of cross compliance standards in 2005. There were no general exemptions in 2005. The exemptions are applicable in circumstances where:

- laying or construction of a pipeline, cable or pylon carried out under statutory authority and on or across farmers’ land, is incompatible with meeting cross compliance standards;
- maintenance of a pipeline, cable or pylon carried out under statutory authority is incompatible with meeting cross compliance standards;
- it is in the interests of human or animal health or safety; or
- it is necessary to treat, or prevent the development of, a serious cause of harm to plant health or serious infestation of any pest or specified weed or infestation.

These exemptions will impose minimal administrative costs on farmers arising through having to make an application, but the savings from not complying with GAEC standards will outweigh these. The 2004 RIA estimates that costs to farmers of complying with cross compliance standards would equate to around 0.5-1% of total farm costs, though this will vary depending on the size and type of farm. Some of these costs would be saved where the above exemptions apply. A farmer would also avoid the risk of a payment reduction being levied for a non-compliance through no fault of his own, with the normal reduction being 3% of the direct payment for a negligent breach and 20% for an intentional breach.

The inter-relationship between set-aside management conditions and cross compliance GAEC standards is clarified, with land set-aside pursuant to Articles 54 or 55b of the Council Regulation subject to specific set-aside exemptions.

(ii) Overgrazing and unsuitable supplementary feeding (on natural and semi-natural grassland)

This standard aims to protect the land from overgrazing and unsuitable supplementary feeding. It has been amended in the SI to incorporate a provision permitting the Secretary of State to advise a farmer of measures she considers to be appropriate to prevent overgrazing and unsuitable supplementary feeding. Where a farmer fails to take this guidance into account then this will be considered in assessing the seriousness of any breach. This will provide a means to tackle repeated problems arising from overgrazing or unsuitable supplementary feeding which farmers have persistently not addressed. A farmer may incur costs in complying with measures set out in the advice. These costs would be no different to those currently arising from management prescriptions set by the Secretary of State as part of Good Farming Practice rather than cross compliance.

There will also be environmental benefits. This standard has underpinned livestock regimes payment schemes for a number of years and other policies such as Entry Level Stewardship and Higher Level Stewardship which are designed to deliver Defra targets such as bringing into favourable condition by 2010 95% of all nationally important wildlife sites. Overgrazing is currently responsible for the adverse condition of nearly 37% of Sites of Special Scientific Interest (on the basis of data available at the beginning of November 2005, at: <http://www.english-nature.gov.uk/special/ssi/reportAction.cfm?Report=sdrt17&Category=N&Reference=0>).

(iii) Management of land not in agricultural production

This standard provides for a minimal level of maintenance for land removed from production. Several exemptions have been added to this standard. These now permit farmers to apply for exemptions from the Secretary of State if non-compliance is for reasons relating to crop or livestock production (in addition to existing reasons relating to the enhancement of the environment). While the administrative requirement of applying for an exemption will mean a minimal cost to farmers, this cost will be outweighed by the benefits to individual farmers arising from these additional flexibilities and management opportunities.

An exemption is also provided, for the first fifteen months from the date of harvest, where cutting or ploughing of the land is necessary to control weed infestations, providing the farmer records this land on his SPR and establishes a green cover on it to ensure maximum environmental benefit by the end of the period.

The restrictions on rules as to the storage of manure on land not in agricultural production are being relaxed from those stated in the 2005 handbook. Rather than restricting storage to 2-months prior to sowing, which was the previous policy, storage is now permitted at any time if it is to be used on that field (or an adjacent field) in the next growing season, subject to there being a low risk of pollution of watercourses as a result of this storage. This will provide economic benefits to farmers as they will not have to find alternative storage facilities, and transportation costs will be correspondingly lower.

(iv) Protection of hedgerows and watercourses

This standard aims to protect sensitive habitats by restricting the use of pesticides and fertilisers on field margins adjacent to hedgerows and watercourses. It has been amended to clarify the requirement to take all reasonable steps to maintain a green cover on such margins, through seeding or natural regeneration. The 2004 RIA suggested that somewhere between 50-80% of field margins may be adjacent to sensitive habitats, which include hedgerows and watercourses. This measure was incorporated within the 2004 RIA but not made explicit in the SI and Handbook in 2005, which only prohibited cultivation and pesticide/fertiliser application. The requirement to maintain a green cover on margins adjacent to hedgerows and watercourses is consistent with the requirement for set-aside strips. However, it will not apply to fields of 2ha or less in consideration to farmers with small fields. This exemption will benefit dairy and small livestock farms in particular.

There are a number of environmental benefits to maintaining a green cover on field margins. Such margins are essential to deliver resource protection, and prevent runoff of soil and associated pollutants. The benefits of establishing field margins adjacent to sensitive habitats with green cover, and restricting the use of pesticides, fertilisers and cultivation on them were estimated within the 2004 RIA and are set out below. This measure will go some way to ensuring the delivery of these benefits:

- Water quality: the total damage to water pollution from agriculture is estimated to be around £250m per year. This measure will have a moderate to significant impact on reducing damage from agriculture;
- Soil erosion: the impact of agriculture on soil erosion is estimated at £14-20m per year. This measure will have a marginal to limited benefit;
- Biodiversity: it is estimated that 70% of the biodiversity on English farms is found in the uncropped area on the edge of fields between crops. This measure will have a moderate to significant impact on the protection of biodiversity and help achieve PSA targets;
- Landscape: Damage to hedgerows and stone walls from agriculture is estimated at £99m per year. This measure will have a limited to moderate impact on alleviating damage.

The cost of actually maintaining a green cover on field margins is expected to be *de minimis*, especially as this can be achieved by natural regeneration. Cultivation of margins is permitted to make the establishment of a green cover easier where new fields are created or where new land is incorporated within the scope of cross compliance.

The handbook also excludes Cornish Hedges and Devon Banks from this standard where they do not meet the definition of “hedgerow” set out in the Hedgerow Regulations 1997. Exemptions to the standard have been added to the SI which apply for reasons relating to the enhancement of the environment (such as cultivation for the conservation of rare arable weeds), crop or livestock production. As previously, 2m margins may continue to be counted towards any set aside entitlement, in which case this standard does not apply to those margins (as the set-aside requirements oblige the establishment of a green cover). There will be some, moderate cost savings to farmers who are able to apply for these exemptions.

We have clarified the rules regarding storage of materials on margins to make clear that this is not permitted by stating in the SI that farmers are required to take reasonable steps to maintain a green cover. This is because the majority of environmental benefits are lost if storage occurs and damage to hedgerows and watercourses was possible because of this practice. Any costs arising from this clarification are likely to be extremely small.

(v) Stone walls

This standard places restrictions on the removal of stone from stone walls. It is being amended to tighten two of the rules regarding what constitutes the legitimate removal of stone. First, from 2006 a farmer may continue to remove stone from a stone wall to widen an existing gap in the wall, but only if that gap is a gateway. Secondly, a farmer may continue to remove stone to improve a public footpath, but only if that improvement is minor (such as providing a solid footing on very wet ground). This is based on feedback from the Countryside Agency suggesting that the existing rules may allow scope for abuse by some individuals to the detriment of walls which have landscape importance. The additional costs implied by these restrictions are minimal and, in the latter, will be expected to fall largely on local authorities and other bodies responsible for maintaining footpaths, rather than individual farmers. However, there will be additional exemptions available for the standard, for reasons relating to agricultural access, and crop or livestock production. This greater flexibility should outweigh the additional restrictions.

(vi) Sites of special scientific interest (SSSIs)

This standard reinforces existing rules on SSSIs in the Wildlife and Countryside Act 1981, which places restrictions on activities which may be carried out on SSSI land. The standard is being amended so that the provisions apply to public bodies or statutory undertakers (such as port authorities or local authorities) in respect of the exercise of their functions as

occupiers of land. This amendment brings an existing legal requirement into the scope of cross compliance and will therefore impose no additional costs on farmers. The standard is now consistent with SMR 5, which sets out the same standards in relation to European SSSIs.

Administration and Enforcement of 2006 SMRs

The SMRs that will come into force on 1 January 2006 form part of the rolling introduction of SMRs over a three year period that began in 2005. The SMRs are either pre-existing legislative requirements under European law, or requirements that Member States are bound to implement, and hence domestic law imposes no additional costs or benefits on farmers. The administration and enforcement of the additional SMRs is a European obligation and will require the relevant control bodies (the Rural Payments Agency and the Secretary of State) to supply control reports to the paying agency for the purpose of cross compliance payment reductions. The relevant bodies are formally designated as such within the SI. Some costs will arise through the inspection and enforcement of the additional SMRs. These will be outweighed by the size of any disallowance from the European Commission due to a failure to comply with the European requirements.

Option 2 – Do Nothing

The consolidation of the existing regulations would simplify cross compliance legislation. In addition, the majority of changes being made to the existing standards in the SI and Handbook provide clarifications, new flexibilities and exemptions which are intended to lower the regulatory burden of cross compliance and decrease costs arising from compliance with the standards. The benefits arising from these changes would not be realised if this option was pursued.

While there are a few areas where we are creating slightly more restrictive standards, these restrictions are minor and the costs arising from these do not necessarily fall on the farmer or require action over and above existing legislation. It is our view that any costs will be outweighed by the benefits brought by the new SI in terms of both generic exemptions and additional exemptions for a number of individual standards.

Furthermore, the new SI will make arrangements for the administration and enforcement of the seven new SMRs that must come into force in January 2006. Not laying the SI would therefore fail to implement necessary European legislation leading to a high risk of disallowance from the European Commission.

6. Small Firms Test

Following advice from the Small Business Service (SBS), the 2004 RIA defined a small business as one with up to 200 members of staff. The agricultural industry is, by this definition, almost entirely made up of small businesses.

Throughout the original development of proposals for cross compliance, the impact on farm business was thoroughly discussed, and a substantial dialogue with farmers and other stakeholders has been maintained. Concerns expressed by farmers in those discussions were taken into account in the development of cross compliance standards, and the concerns influenced the measures set out in the public consultation in 2004 and which subsequently came into force in 2005.

Farmers were also concerned over the potential bureaucracy and inflexibility of approach under cross compliance. The clarifications, new flexibilities and exemptions to standards that have been made to the 2006 Handbook and SI, have contributed to addressing these concerns.

7. Competition Assessment

Since the agricultural industry is almost entirely made up of small businesses the risk of whole-sale takeovers of small farms by large businesses is mitigated. The clarifications, flexibilities and exemptions, and reduction in regulatory burden being provided for 2006 will reduce any such risks.

8. Enforcement, sanctions and monitoring

The regulations provide for the administration and enforcement of cross compliance standards by the CCA (Competent Control Authority). The Secretary of State is designated as the CCA for SMRs 10, 11 and 13-15, which are being introduced in 2006. The Rural Payments Agency, as paying agency, will remain the CCA for all the 2005 standards, and will also be the CCA for new SMRs 9 and 12, as well as the new SPR (Soil Protection Review). Where breaches of standards occur, the CCA may write a warning letter or, where the breach is more substantial, impose a payment reduction. These are European requirements and Member States have little discretion over them.

We intend to monitor and evaluate the implementation of CAP Reform, including cross compliance and its effect on farm businesses, after full implementation, in 2008. We anticipate initiating the review process for at least some elements of cross compliance in 2007, in order to be able to contribute to the EU reporting process, which will feed into the 2008 review.

9. Implementation and Delivery Plan

All the GAECs and SMRs 1-8 took effect in January 2005. SMR 8a took effect in July 2005. SMRs 9-15 and the changes to existing standards set out within the draft SI and 2006 Handbook will take effect in January 2006. The 2006 Handbook will, in December, be sent to all farmers in England claiming the Single Payment to inform them of the standards that apply for 2006. Administration and inspection of the 2005 standards will continue as for 2005 with the RPA, as paying agency as CCA, with the Secretary of State designated as CCA for SMRs 10, 11 and 13-15.

10. Post-implementation Review

As set out at section 8 above, we intend to monitor and evaluate the implementation of CAP Reform, including cross compliance and its effect on farm businesses, after full implementation, in 2008.

11. Summary and Recommendation

We recommend that option 1 of this RIA, the laying of a new, consolidating SI is taken up. Annex A below sets out, in summary, the costs and benefits that lead to this recommendation. In the light of the consideration of practical and policy implications and costs and benefits set out, we believe that there will overall be no, or *de minimis*, costs arising from the changes we propose which will be balanced by if not outweighed by the benefits arising from the changes that we are proposing to the cross compliance standards. The majority of changes proposed are issues on which Defra or its implementing agencies have identified the need for additional clarification or flexibilities such as exemptions, or which have been raised by farmers and industry stakeholders. Some costs will arise from the inspection and enforcement of the 2006 SMRs, but these will be outweighed by the risk of disallowance due to non-compliance with European requirements.

12. Declaration and Publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed: Bach

Date: 14th December 2005

Lord Bach

Parliamentary Under Secretary of State

Department for Environment, Food and Rural Affairs

Annex A: Summary of Costs and Benefits Arising from Options 1 and 2

Option 1 – Refining Cross Compliance standards for 2006		
Measure	Costs	Benefits
Consolidation of existing regulations	None.	Simplification of cross compliance legislation.
Soil Protection Review	<p>One-off cost of £18-36 for completion of the SPR in 2006. The costs of updating the SPR in subsequent years will be <i>de minimis</i>. (These costs are far below those estimated in the 2004 RIA for a medium-sized farm of 130ha, which were £2/ha or £160).</p> <p>Some initial costs may arise through changes in land management practice following completion of the SPR.</p> <p>No cost on common land, or holdings of 0.3ha or less, which are exempted.</p>	<p>Environment benefits, particularly for soils, and incidental water quality benefits. Landscape and biodiversity benefits may also arise from changes in land management practices.</p> <p>Economic benefits should also arise via returns to the farm business in response to better land management practices.</p>

Broadening the definition of “agri-environment commitments”	None.	<p>Clarifies which schemes are covered by the definition.</p> <p>Where specific scheme requirements conflict with GAEC standards then no payment reduction will be made for non-compliance with cross compliance standards.</p>
General exemptions to GAEC standards	<i>De minimis.</i> Administrative costs may arise through the process of applying for an exemption.	<p>Savings arising through exemptions could reduce farm costs from cross compliance (which were estimated in the 2004 RIA to be 0.5-1% of total farm costs depending on type and size of farm).</p> <p>The risk of payment reduction for non-compliance in the circumstances covered by the exemptions is removed.</p>
Issue of advice by the Secretary of State to prevent overgrazing and unsuitable supplementary feeding	Costs may be incurred in complying with advice given. These costs would be equivalent to those already arising from management prescriptions set by the Secretary of State as part of Good Farming Practice.	<p>Environmental benefits for nationally important wildlife sites including SSSIs (37% of SSSIs are in adverse condition due to overgrazing).</p> <p>The standard underpinned previous livestock regimes payment schemes, and currently underpins Entry and Higher Level Stewardship among others, which are designed to deliver Defra targets.</p>

<p>Agronomic exemptions for land not in agricultural production</p>	<p><i>De minimis</i>. Administrative costs may arise through the process of applying for an exemption.</p>	<p>Economic benefits arising through non-compliance with the standard.</p> <p>Allows weed infestations to be kept under control thus minimising economic damage.</p> <p>Additional flexibilities and management opportunities apply to farmers with exemptions.</p>
<p>Relaxation of rules relating to the storage of manure on land not in agricultural production to permit storage at any time (subject to being used in next growing season and low risk of runoff). Storage no longer restricted to 2-months prior to sowing.</p>	<p>None.</p>	<p>Economic benefits arising because alternative storage facilities do not need to be found, and because transportation costs will be correspondingly lower.</p>

<p>Maintaining a green cover on field margins next to hedgerows or watercourses, by seeding or natural regeneration.</p> <p>Storage of materials on these margins is not permitted.</p>	<p><i>De minimis</i>, as green cover can be achieved through natural regeneration. The costs of storing material elsewhere should also be minimal.</p> <p>No cost to farmers with fields of 2ha or less; where margins are adjacent to Cornish Hedges or Devon Banks; or where land is set-aside. The GAEC standard does not apply in these circumstances.</p>	<p>Environmental benefits include contributions to improving water quality; soil erosion reduction; increasing biodiversity; and alleviating damage to landscape features.</p> <p>Restricting the storage of materials on these margins should maximize these benefits.</p> <p>Economic benefits should also arise via returns to the farm business in response to these better land management practices, leading to e.g. lower soil erosion.</p>
<p>Restrictions on the removal of stone from stone walls:</p> <ul style="list-style-type: none"> - for <i>minor</i> repairs to footpaths; and - to widen an existing gap only if it is a <i>gateway</i>. <p>Additional exemptions to this standard apply for agronomic reasons, and for agricultural access.</p>	<p><i>De minimis</i>. These restrictions are minor. The financial burden of maintaining footpaths primarily falls to local authorities and other bodies.</p>	<p>Environmental benefit arising from the preservation of stone walls of historic or landscape importance.</p> <p>Minor economic benefits would arise to farmers where they apply for, and are granted, an exemption to the standard.</p>

Application of SSSI provisions to public bodies and statutory undertakers (such as port authorities), in respect of the exercise of their functions as occupiers of land.	None. The standard reinforces existing legislation.	Reinforcement of the environmental benefits arising from the protection of SSSIs.
Administration and enforcement of 2006 SMRs.	None. SMRs are existing legal requirements or requirements that Member States are bound to implement. There are therefore no additional costs associated with meeting these SMRs under cross compliance.	Potential economic benefits arise through the avoidance of any risk of disallowance from the European Commission for failing to implement legislation.

Option 2 – Do Nothing

Measure	Estimated Costs	Estimated Benefits
None of the measures set out under option 1 are implemented. 2005 standards remain.	<p>No simplification of cross compliance legislation.</p> <p>No clarifications of policy, new flexibilities or exemptions would apply. This could impose a cost on farmers who would value a flexibility or qualify for an exemption.</p> <p>We believe the overall benefits arising through option 1 would outweigh the costs. These benefits would not be</p>	<p>There would be no economic costs arising from the implementation of the revised standards under Option 1.</p> <p>There would be no costs of inspection and enforcement of the 2006 SMRs, but these would be outweighed by the risk of disallowance for non-compliance with European requirements.</p>

	<p>realised.</p> <p>There would be a high risk of disallowance arising from the European Commission for failing to implement legislation for the administration and enforcement of the 2006 SMRs.</p>	
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